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TO RUEHC/SECSTATE WASHDC PRIORITY 5723
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RUEHDA/AMCONSUL ADANA PRIORITY 2817
RUEHRC/USDA FAS WASHDC

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SIPDIS

DEPT PASS USTR FOR MMOWREY
TREASURY FOR OASIA
USDOC/ITA/MAC/SNAJDI
DEPT PASS EXIM FOR MARGARET KOSTIC
USDA OSEC FOR DEP U/S TERPSTRA
USDA FAS FOR OA YOST; ITP/SHEIKH; FAA/DEVER

SENSITIVE
SIPDIS

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SUBJECT: PARLIAMENT PASSES ANOTHER LAW TO SAVE CARGILL'S SWEETENER
PLANT IN TURKEY

11. (SBU) Summary: The Turkish Parliament yesterday passed an amendment to the Soil Protection and Land Use Law that is intended to protect several thousand companies from closure, including Cargill's Orhangazi sweetener plant. This is the third attempt by the ruling party AKP to give an amnesty to industrial facilities built on agricultural land without the required licenses. With the amendment, the companies will have a two-year period to obtain the missing licenses, during which they may continue to operate. Although the amendment seems to address the objections listed in previous court rulings against prior laws intended to protect Cargill and others, it can provide only limited shelter against more legal challenges from foreign investment opponents. End Summary.

12. (SBU) On March 26, the Turkish Parliament passed an amendment to the Soil Protection and Land Use Law, which is being publicly referred to as the "Cargill Law." The amendment gives amnesty to industrial facilities built on agricultural land before October 11, 2004 without the required licenses. To benefit from the amnesty, the companies must apply to the Ministry of Agriculture and Rural Affairs (MARA) to get the missing licenses within one year of issuance of this amendment. The industrial facilities may continue to operate for two years after the issuance of this amendment, while the companies' license applications are processed. The companies will also be required to pay a YTL 5 (USD 4) per square meter fee to the GOT for non-agricultural use of land, and commit not to disrupt the "integrity of agricultural land."

13. (SBU) This was the fifth attempt by the ruling AKP party to give an amnesty to industrial facilities built on agricultural land. The first was in 2004 and required the companies to complete their licensing within 6 months following issuance of the legislation. Cargill was unable to benefit from this legislation due to objections from local administrations and subsequent court rulings. The GOT passed a second law in 2005 intended to define these industrial facilities as "Private Industrial Zones." The Council of State issued a stay order on this law in 2006, which caused interruptions in operations at the Cargill plant. The AKP then amended the Soil Protection and Land Use law in 2006, but the amendment was vetoed by former President Sezer. The amendment was passed again by the Parliament in 2007, but the Constitutional Court stopped implementation of the law, arguing that such establishments harmed the integrity of agricultural land. The latest amendment addresses the Court's concerns and requires that companies maintain the integrity of agricultural land as a precondition for amnesty.

¶4. (SBU) Commenting on the legislation, Cargill representatives noted that the opposition CHP Party could refer the new amendment to the Constitutional Court for review. However, the wording of this amendment is precisely the same as the previous one that the Court upheld, so the CHP may see no value in asking for another Court review. However, they expect further challenges during the permitting process. Regarding permits, Cargill plans first to wait for the results of their appeal of local court rulings against their previous permit applications under the 2005 law. If the Danistay (High Court) rules against Cargill or a decision is not forthcoming, they will re-apply for permits under the newly amended law.

¶5. (SBU) Comment: While the stated purpose of the amendment is to allow over 20,000 industrial facilities built on agricultural land to continue operation, the vast majority of those companies -- Turkish-owned and operated -- have never been threatened with closure. Cargill has been singled out by local politicians and NGOs, who have led the seven-year legal war against a major foreign investor that made a relatively rare greenfield investment in Turkey. Although this legislative amendment includes the correct wording required by the previous Constitutional Court ruling, there is no guarantee that it will bring the legal warfare to a close. Cargill's investment symbolizes foreign investment for many FDI opponents, and they will look for ways to continue the fight. End Comment.

WILSON